



POLICE DEPARTMENT

January 8, 2009

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Regina Dawson
Tax Registry No. 894691
26 Precinct
Disciplinary Case No. 84214/08

The above-named member of the Department appeared before me on October 23, 2008, charged with the following:

1. Said Police Officer Regina Dawson, assigned to 26th Precinct, while off-duty, on or about January 24, 2007, in [REDACTED] County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Police Officer did remove No Parking signs posted by the [REDACTED] Public Safety Unit, without authority or permission to do so.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Police Officer Regina Dawson, assigned to 26th Precinct, while off-duty, on or about January 24, 2007, in [REDACTED] County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Police Officer did attempt to prevent a Police Officer or Peace Officer from effecting an authorized arrest, in that said Officer did flee from the arresting Officer and/or did refuse to place her hand behind her back, as required.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

3. Said Police Officer Regina Dawson, assigned to 26th Precinct, while off-duty, on or about January 24, 2007, in [REDACTED] County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Police Officer did fail to identify herself as a New York City Police Officer, when arrested by [REDACTED] Peace Officer Martinez, as required.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

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The Department was represented by Lisa McFadden, Esq., Department Advocate's Office, and the Respondent was represented by Craig Hayes, Esq.

The Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty as charged.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Mario Rivas and Probationary Police Officer Robinson Martinez as witnesses.

Mario Rivas

Rivas is a special patrolman peace officer employed at [REDACTED] for 17 years. His duties are to do patrol and enforce rules and regulations and protect the property and the people as well. He agreed that he essentially has police powers in [REDACTED] and that he was working on January 24, 2007. He said that on that date his tour was 5 o'clock to 10'clock, he was assigned to post SP-1 to patrol certain buildings and townhouses, he was in a scooter, in uniform, and was working solo.

During Rivas' first contact with the Respondent, he said that he was parked in the area of the power plant on [REDACTED] Boulevard when he was approached by the Respondent, who "sounded angry and upset with the fact there was 'No Parking' signs

posted on the power plant side by the fence area...She asked who put up those signs. She stated those signs are not authorized." Rivas said that he told her she had to call the company, Riverbay Corporation and he did not have any further conversation about the signs.

Rivas said that the Respondent stated she was going to rip the signs down and did not say why. He described her demeanor during his encounter as "upset and angry and disagreed with the fact they were posted," and her tone of voice as "a little loud." After this interaction, he said he left the area.

Rivas said he saw the Respondent next when she approached Peace Officer Martinez who happened to stop by. He agreed that he heard the interaction between the Respondent and Martinez and said she asked Martinez who put up the signs. He said her demeanor then was "still angry." He said he had occasion to return to that area "when [he] overheard the radio room Peace Officer Martinez requested for back up." He responded back and observed Martinez walking the Respondent in the middle of [REDACTED] Boulevard, handcuffed. He said they were walking back to his vehicle and she was trying to walk away from him. He agreed that she was handcuffed and that she appeared to be struggling. He described the struggle as "she was trying to pull away and moved forward."

On cross-examination, Rivas said he has been employed by his department for 17 years and previous to that he worked for the New York City Department of Parks in the same capacity. He agreed that he had to attend the Police Academy for training, that that included various basic responsibilities of backing up other officers and responding to an officer in need, that the Respondent was upset, angry, a little loud, and that he saw her

walk away from him (Rivas) and walk toward a fellow officer he works with. He said that he has worked with that particular officer for about four years and that his (Rivas') scooter was about four yards from his car.

Rivas said that after he saw this upset and angry person, he left the area. When asked if he was convinced that the Respondent was absolutely no threat or if he was abandoning another officer when he left, Rivas said that he had to "move on" in his patrol assignment. He agreed that part of his patrol assignment was backing up a fellow officer who needs assistance, and that it was fair to say that despite his testimony that the Respondent was angry and upset, that he didn't think she was any kind of threat. He said "Yes, that's what I thought; that she wasn't going to be a problem."

Rivas agreed that she was definitely disagreeing with the signs and never thought it was going to be a problem. He denied he ever observed the Respondent tearing any signs down, just hitting them.

On redirect examination, Rivas agreed that he saw the Respondent hitting a sign, which he described as "hitting them in a motion ... with the back of the hand." He said that she stated that she was going to tear them down.

Probationary Police Officer Robinson Martinez

Martinez is a police recruit who resides in [REDACTED]. He said his tax number is 947224. In January 2007 he was employed by [REDACTED] and had been employed there close to four years at that time. He said he was a peace officer at that time and his responsibilities were to enforce quality of life issues. He said he had four months of training, some training with the Department and firearms training. He said peace officers

have arrest powers within [REDACTED] He agreed that he had basic police powers, that he carried a firearm, and that he is currently a recruit with the Department, since July 2008.

Martinez agreed that he was working on January 24, 2007, working a 4 o'clock to midnight tour assigned to radio motor patrol (RMP) duties. He said he had to post "No Parking" signs due to oversized equipment being delivered to the power plant in the vicinity. He agreed that he was in an RMP, and that he was in uniform. He said he was working alone. He said that at approximately 5:30 p.m., he had stationed his vehicle in front of [REDACTED] Boulevard and was waiting for signs to be posted. He said he had parked his RMP with flashing lights to watch traffic and he was next to Rivas' scooter, talking to him.

Martinez said that [REDACTED] is a four-lane street with an island dividing the middle and two lanes going east and two lanes going west. He said he was in the right lane facing westbound. He said to his right was [REDACTED] where the power plant is housed. He agreed that he had previously posted "No Parking" signs for the following day. He said that at that point a couple of dozen signs had been posted.

Martinez said that the development has eight garages and most were shut down due to problems with the Department of Buildings and Parks. He said occupants had limited area to park and his putting out the signs was an inconvenience.

Martinez said that Department's Exhibit (DX) 1 is a copy of the "No Parking" signs he was putting up, except that he put up cardboard signs. He said the signs he put up were the same color as DX 1, black and white. He said DX 1 indicated no parking on Friday January 26, 2007.

Martinez said at that time he ran out of tape or staplers and agreed that he noticed the Respondent approach the area. He denied that he knew who she was or that she was a police officer. He said he observed the Respondent between his vehicle and the scooter. He said "she approached him (Rivas) from the far side of the scooter and she is questioning the signs. What was said, I don't know. I put up my window. Her demeanor and body language said she was pointing to the sign and not too fond of it." He described her demeanor as "upset, aggressive," and said "she showed she was uncomfortable with something. As to what, I couldn't listen to the conversation, but it seemed at the time the officer (Rivas) had spoke to her before. I know he took off."

Martinez said that after Rivas left the area, the Respondent approached his vehicle on the passenger side. He agreed he was at the driver's seat. He said he lowered his window half way and paraphrased her as saying "I am sick and tired you thinking you are fucking cops. You are not cops. You have no authority putting these signs up." He said that she went to the far end of the driveway and ripped part of the sign in half, and he got out of the vehicle and warned her.

Martinez said "again she is saying 'I am going to rip them down.' I went back to my vehicle. At that point I thought she was mentally challenged. [REDACTED] has group homes. Maybe she will go about her business. At that time I see she proceeded to rip more signs. I come out. I watch. I tell her 'If you rip another sign I am going to lock you up. What you are doing is considered OGA (Obstructing Governmental Administration).' She proceeds to rip another sign. That's when I took out my handcuffs, when she seen that she kind of walked away from me. I grabbed one hand and she took off running into oncoming traffic."

Martinez said when he approached her vehicle he told her "if you are questioning what I am doing, I will call my supervisor, he will tell you what is going on. He is a security guard just like you. Call 311. Contact the Department of Transportation. This is where we get these from and that's when she proceeded to rip the signs." He agreed that he was talking about the department signs and that at that point he exited his vehicle. He said that any further conversation between he and she at that point was more or less him trying to have her disengage what she was doing. He said that he probably spoke to her three or four times to "cut it out."

Martinez did not recall if the Respondent continued to speak with him at that time. He said "her demeanor was to challenge me. I was telling her not to do that." He described her tone as "very aggressive." He said that had he not learned that she was a police officer after she was placed under arrest, he would have classified her as an EDP (emotionally disturbed person).

Martinez said that the Respondent running into oncoming traffic was "not very smart." He said that when he ran after her they were stuck in the middle of the island. He said he was trying to place her under arrest and that was when he grabbed her put her body against the hood of the vehicle parked inside the island. He said that at that point he cursed at her when a vehicle went by him and that once he handcuffed her, he told her that if she didn't give him her other hand, he was going to mace her and he reached for his pepper spray. He said the Respondent complied and he placed her under arrest. He said that instead of calming down, the Respondent started saying "Why are you cursing? I am not cursing at you." He said they almost got run over by a vehicle and his supervisor and "everybody else" showed up. He said that prior to running after her, he

had radioed in that he had a possible EDP. He said by the time his supervisor arrived, the Respondent was in handcuffs.

Martinez said that prior to the time the Respondent ran across the street, her tone of voice and aggressive behavior made him believe that she could be an EDP. He said, "I mean there was nothing I could have said to her that would calm her down. A normal person would say, listen this is my job. I will call my boss and go that way. She kept challenging what I was telling her. Just her whole body language at the time seemed like she wanted to confront me."

Martinez said that he had spoken to the Respondent after she ripped one sign and he went back to his vehicle. He said she did not leave the area and proceeded to go behind, going toward the RMP, to the side he was sitting on and rip another sign on a tree or lamppost. He said that was when he approached her and took out his handcuffs and told her that if she ripped another sign, he was going to lock her up. He said she responded by saying, "You have no authority to lock me up." He said he did this because she was "ripping another sign and I locked her up for OGA. She went to grab another sign, the third one. When I grabbed her, that's when she took off into the street." He said that he had radioed in that he had a possible EDP by the time he came out of his vehicle the second time, before she took off.

Martinez agreed that he had stated that he attempted to grab the Respondent and that was when she crossed the road, four lanes on [REDACTED] He said the traffic was "pretty busy" and said there was a shopping center, a couple of bus stops and a highway in the area. He agreed that there was traffic when she ran across the road, and that traffic was disrupted because people had to brake hard. He said "like when I ran

after her, I was more concerned about her safety. I thought she was going to get hit and cause a major accident....I also believed she was going to get hit by a car.” ¶

Martinez said he apprehended the Respondent “on the middle island” and clarified that he actually apprehended her in the third lane from where he started, in the street, and he had to bring her toward a parked car in the middle. He said that when he caught up with her, he grabbed her from behind, placed her facing the parked vehicle and grabbed her arm. He said at that point she was refusing to comply and resisted giving her hand to him. He said that he told her he was going to use his pepper spray if she did not comply, and she did.

Martinez agreed that he had cursed at the point when he handcuffed the Respondent and he had pulled her back from the road. He said he did not know the exact curses he used because he was in fear for his life. He admitted saying “son of a bitch” but did not know what he specifically said. He denied that the curses were directed at the Respondent and said the curses were “an utterance to my reaction like being in the line of danger.” He denied that he had ever cursed at the Respondent prior to that, or done so afterwards.

¶ Martinez said that after the Respondent was cuffed, he escorted her across the street to where his RMP was, his supervisor arrived, he told the supervisor what occurred, the supervisor verified the arrest and she was transported back to the station. He denied that the Respondent ever identified herself as a New York City police officer. He said when he got to the station, he never searched her but requested a female officer to pat her down. He said the female officer checked the Respondent’s bag and asked if she had identification on her, and she said “My driver’s license is in my bag” and the female

officer went to look for it, found a New York Police Department ID and the driver's license, and told the sergeant.

Martinez said he remembered the sergeant asking the Respondent if she worked for the NYPD, and she said "yes." He said she was asked if she was a crossing guard, to which she said "No, I am a police officer." He said he had been at the station 10 or 15 minutes when the NYPD ID was found. He said the encounter on the street was possibly 10 minutes long.

Martinez said that once the Respondent's identification was verified, the 45 Precinct was notified and the duty captain, a union delegate and other ranking officers showed up. He said he explained to them what happened and what he was placing her under arrest for. Once everyone was interviewed, he said his lieutenant said to charge her with disorderly conduct. He was shown a copy of the front and back of the summons he issued (DX 2) and stated that the back indicated that the basis for the disorderly conduct charge was obscene language, obstructing vehicular traffic and causing public alarm. He said that during the time that he was having his discourse with the Respondent on the street, and then when she crossed the street, there were people walking by the bus stop. He agreed that he was aware of the area where the incident occurred, that he had the opportunity to review the videotape (DX 3) that captured the incident, and that the videotape shows a fair and accurate representation of the actions of the parties.

Martinez then played and narrated the videotape. He described the scene as "an entrance of [REDACTED]" and pointed out his vehicle with the lights on, two lanes of traffic going westbound, two lanes of traffic going eastbound, the island in the

middle with vehicles parked on both sides of the island, and the lamppost along the area where he was putting up the "No Parking" signs.

Martinez said that Rivas' scooter showed up, he (Martinez) moved his vehicle and lowered his window, and the two conversed about what else he needed, like masking tape or some type of glue gun, to put up the signs. He said then the Respondent walked to the scooter and is seen talking to Rivas. He said when he picked up his head again the scooter was gone and the Respondent approached the passenger side window of the RMP. On questioning from the Court, Martinez agreed he could be seen on the tape getting out of the vehicle, talking to her, then starting to walk to the vehicle again.

Martinez said he spoke to the Respondent and warned her, then went back to the vehicle. He noticed she didn't comply and was ripping down the signs he was putting up. He said he walked around the RMP and went back to apprehend her and that was when she ran across the street. He pointed out the location on the video where he apprehended her, between two cars in "the third lane, once you pass the two lanes and go over the island."

Martinez continued by saying "At that point the scooter vehicle that was originally here came back. He came to assist us. As I was struggling with the individual, I had a [microphone] up here and it kept depressed so they could hear me struggle. I asked for backup and requested an ambulance." The Court and the Assistant Department Advocate stated that additional cars responded to the scene (on the video).

Martinez denied that at anytime in the videotape was he able to see the signs he put up or the Respondent ripping down signs and said this was because of "the blur and obstruction. There is a large vehicle. There is a white van." He agreed he called an

ambulance and to his knowledge the ambulance arrived at the base and it was no longer needed. He did not recall making any notation that he did call an ambulance, and denied that he spoke to ambulance personnel himself or saw them. Looking at his memo book (DX 4), he denied that his recollection of calling an ambulance was refreshed, and stated "I don't have it in my memo book. I can't recall requesting it. To my recollection, I did call it."

Martinez agreed that he had reviewed some still photographs that were taken from the videotape and identified them as a still of the vehicle he was operating that day, Rivas' scooter, and the location of the power plant (DX 5-1), both vehicles with the Respondent on one side of the scooter (DX 5-2), the Respondent on the other side of the scooter (DX 5-3), the scooter about to take off or taking off (DX 5-4), himself outside the vehicle speaking to the Respondent (DX 5-5), himself outside the RMP without any silhouettes of the Respondent (DX 5-6), the silhouette of himself and the Respondent in the second lane of the street coming back or running to the location (DX 5-7). He denied that this was the furthest that the Respondent got when she was running away from him, saying that they got to the third lane passed the middle island, and he drew an "X" where he apprehended the Respondent and circled it.

Martinez agreed that DX 4 contained his memo book entry for the date of the incident and that he reviewed it prior to testimony. When asked "If you made an entry or not, did you make any entry about calling the ambulance?" he answered "I stated to my control supervisor I was dealing with a possible EDP."

On cross-examination, Martinez was asked if he observed the Respondent already acting aggressive, loud, and argumentative when she walked to Rivas, he answered "Her

demeanor seemed a little bit out of the ordinary.” He agreed that it was fair to say that one of the photographs that shows the Respondent where she was positioned next to the scooter when he observed this, that this was a busy street, that it was cold, and that his windows were up. He said that prior to the Respondent getting into a conversation, he and Rivas were speaking. Once she approached Rivas, he put up his window. He said whatever happened between them he could not tell what was being said except for body language and hand gestures.

Martinez agreed he was sitting in the patrol car, that the Respondent is on the far side of the scooter, and that he was able to see her in his position. He described her demeanor at this point as “aggressive.” When he was asked, “While you were watching someone being aggressive with another police officer, you sat in your car?” he answered, “She was not being aggressive. Her demeanor was aggressive. He was not in present danger. He was inside his scooter and I was inside of mine. At that point, the way we were trained then, if an EDP is not in danger, you let him be.”

Martinez said that he made a determination that the Respondent was an EDP when she approached his vehicle, and that he knew she was upset when she approached Rivas. He said that he made the determination that she was aggressive and upset by her body language. When asked if the Respondent was not aggressive or upset enough for him to get out of his car and help a fellow officer, he answered “If he needed – I didn’t....At that time he did not seem like he needed help.” He denied that she was not enough of a threat where he had to get out of the car and help. He agreed that after speaking with Rivas, he left the scene.

Martinez said at the time this happened, he had been a [REDACTED] security or peace officer close to four years. He said that before that point he had made between 50 and 100 arrests including summonses and disorderly conduct arrests. He agreed that he got about four months of training before getting on that job and said that he went to a 2-day training for recognition of an EDP and then the department brings him in every year to go over EDPs.

Martinez said that in the [REDACTED] Police Department, the procedure included standards to classify an EDP, how to handle them, saying "They have a lot of group homes. If they don't appear to be in eminent danger, or if they are about to get struck about a bus, let them go about their business. Them being in this area is not unusual."

Martinez agreed that he has been in a situation where someone was declared an EDP and brought to a hospital, saying it was "numerous" times. He said "We could apprehend and cuff them. If we were in danger, an ambulance takes them away. The supervisor will respond." He denied that in this particular case, he did not keep the Respondent at the scene and wait for an ambulance. He agreed that once the supervisor arrived he told him what happened and that he used the term "EDP." He said that after the lieutenant observed the Respondent at the scene and was told what happened, he was instructed to bring her back to the base.

Martinez denied that it was a fact that despite all this testimony and what the Respondent was doing, she was never declared an EDP and that she was never brought to the hospital. When asked "None of your supervisors agreed that she was an EDP?" he answered "Some NYPD supervisors agreed with me." He denied that they were at the scene where the incident occurred and when asked "The NYPD supervisors saw none of

this?" he answered "They did go to the station house." He denied they were at the power plant or that he felt it was careless for him on direct examination to call someone an EDP that was never called an EDP.

Martinez said that the first thing that the Respondent said to him at the scene when she first approached him was something to the effect of "she was sick and tired of [REDACTED] security acting as cops. 'You guys ain't cops.' She was cursing and questioned the signs as to why we put them there." He agreed that working in [REDACTED] [REDACTED] being a small police force, he got that sort of criticism a lot. He agreed that it is common for people to refer to them as "rubber gun cops" or "toy cops" but denied it bothered him. When asked "It didn't make you angry?" he said "I heard it all the time."

Martinez denied that he cursed at that point when the Respondent initially confronted him, that he ever called her a "bitch," that when he eventually apprehended the Respondent he said he may have said "son of a bitch" or that he was not sure, that he called her a bitch, or that he called her a bitch placing her under arrest.

Martinez said the first time he threatened to arrest her was the first time he came out of the vehicle or possibly the second time. He said he wanted to disengage and retreated back to his vehicle or was in the process of retreating back to the vehicle hoping the Respondent will go away. When asked, "At that time you were back in your vehicle?" he said, "I now I gave her several warnings. Probably by the second or third warning to stop her, I threatened to arrest her." When asked, "When you were pursuing her and grabbing her wrists, you had your cuffs out?" he said, "I first was trying to grab her prior to running in the street. She ran in the street and I ran after her."

Martinez denied that when he caught up with the Respondent in the street at any point did she say "I am a police officer," that none of those terms were use, that she ever said "I am a cop," or that she said "Take it easy, I'm on the job." When asked if he ever pulled over somebody who was a member of the service, he said "[REDACTED] didn't do Vehicle and Traffic Law." He agreed that he has confronted off-duty members of the New York Police Department in his capacity doing some sort of enforcement, that typically in his experience when he dealt with police officers off duty, one of the first things they say is "I am on the job," and that this is the only time that a police officer off-duty has been apprehended by him and never mentioned she was a cop.

On redirect examination, Martinez said that when the Respondent was at the side of the scooter and he was in his car, he was able to observe her at an angle from the driver's seat. He said "That scooter is quite small. You can see anything that is surrounding the scooter and I mean no disrespect, she is not a small frame. You could see she is there." He said that at the time he worked at [REDACTED] he interacted with "many" people who he suspected or confirmed were emotionally disturbed. He said "There were so many group homes in that area and some of them run away. You have to take them into the hospital. Many times they threaten to harm themselves. I dealt a lot with them." He said if he suspected someone was an EDP, he did not always hold them. He restated that if a person seemed not a danger to himself or anyone else, Martinez was instructed to "let him be."

Martinez said that it was not his job to diagnose or classify anyone, and due to his training and prior dealings, the Respondent's "behavior portrayed that of someone who was classified as an EDP." Upon questioning from the Court, he agreed that he saw the

person he described in the courtroom and pointed her out as "the lady in the white sweater."

The Assistant Department Advocate entered into evidence DX 6, a Certificate of Disposition from a trial on this matter in Criminal Court, City of [REDACTED] where the Respondent was found guilty of disorderly conduct, and DX 7, a 15-page transcript of the trial dated March 14, 2008 in SAP 2 of [REDACTED] County.

The Respondent's Case

The Respondent testified in her own behalf.

The Respondent

The Respondent is a 20-year member of the Department. Once she graduated from the Police Academy, she was assigned to FTU-4 for nine months, then she was assigned to the 26 Precinct, her present command. She said she did eight years of patrol, 4 years of school safety, and up to this incident, she did traffic safety. She currently has an administrative assignment.

The Respondent agreed that she recalled the incident that occurred on January 24, 2007. She said she did overtime the night before and thinks she got off early that morning. She said she lived directly across the street from where the incident happened.

The Respondent said she left her house to pick up her baby from the babysitter, noticed signs that were posted, and walked across the street to see what the signs said. She said the signs were not the regular New York Police Department signs she posted for

no parking, "It was a photocopy of a NYPD sign with a date and a time similar to the one she marked into evidence."

The Respondent said once she saw the signs and saw the scooter, she told Rivas "The signs are bullshit and if I tore it down it wouldn't mean anything." She denied that her tone was loud. She said Rivas told her I wouldn't do that if I were you," and drove off in his scooter. She said her exchange with Rivas from the time she first spoke until he drove off was "Maybe 2 or 3 minutes. It wasn't long." She denied that at any point she was throwing her arms around acting aggressive, saying she was pointing out the date and time on the copy of the "No Parking" sign.

The Respondent said after Rivas drove away, Martinez parked his car and she went over to him on the passenger side and made the same statement. She said Martinez told her that if she had any problems she should call 311 or the security office, but he was just doing his job. She said he was not posting any signs, he was sitting in his car and they were conversing. She said Martinez told her "If you have a problem, call my boss." She then told him "I really didn't know you guys have jurisdiction in the street," and he said "We do." She said she then asked "How come we call you for ringing alarms and you guys call 911 and call the police?" to which she said he answered "You got a big fucking mouth, bitch."

The Respondent said she did not curse back at Martinez and told him "Now is this how they told you to speak to the community in security school? She said this "enraged" Martinez who had a "tantrum" inside his car that included stomping, yelling, name-calling and cursing. She said beside calling her a "Big mouth fucking bitch," he also told her to 'get the fuck out of here.'" She said she felt this was uncalled for and went to the

driver's side of the car and continued talking to him "about the signs coming down." She said they were talking for "a good few minutes" asking where the signs came from and if he made them up.

The Respondent said Martinez said "That's it" and he frightened her. She then went across the street and stopped at the median after asking herself "Why am I running? I didn't do anything wrong." She said she then asked him "What are you doing? I am a police officer" to which Martinez said "It is too fucking late for that." She said he then ordered her to put her hands behind her back and she said "Wait a minute" and he cuffed her tight and slammed her across the hood of the car.

The Respondent said the reason she told him she was a police officer was because he was going to arrest her for having an argument with him because she upset him by questioning his authority. She agreed that she was hoping that when she told him she was a cop he would not arrest her. She said that she was cuffed behind her back and slammed on the hood of the car, that she had her cell phone in one hand and her bag in the other, that Martinez took her cell phone and that a "tall, White officer" came but Rivas did not come back to the scene until after the supervisor got there.

The Respondent said Martinez then walked her across back to the other side of the power plant, placed her in a car and told her "How does it feel to be cuffed, bitch." She was taken to the security office. The Respondent said when she was cuffed, Martinez took her phone and the officer took her bag. She stated: "I said, 'My police ID is in the bag.' He said, 'We'll deal with that later.' I didn't find out until the next day. I didn't ID myself. I was in total shock. I didn't know." She said that she told Martinez on the

median three or four times that she was a police officer. She said she also told the other officer who took her bag and phone that "My police ID is in the bag."

The Respondent said while at the security office she was placed in a cell cuffed and a female security officer came in, talked to her, searched her things and apparently that was the first time Martinez knew she was a police officer. She said she had told him where her ID was located in her purse when they were out in the street. She denied that she was armed during the entire incident, that her weapon was in her locker in the 26 Precinct.

The Respondent said that after Martinez claimed he found out that she was a police officer, they sat her down in a room, asked for her pedigree information and the duty captain came by. She said her duty status was changed to modified assignment and has remained so since then. She said she was not questioned that night and did not get questioned until May 2008 during her GO-15.

The Respondent said "it was in bad taste that I said the signs were 'bullshit,' but my understanding of saying the word 'bullshit' is not disorderly conduct." She said both she and Martinez were rude and "it got ugly." She denied tearing down any signs and said Martinez only said that because he was angry and wanted to get back at her.

On cross-examination, the Respondent admitted that she said to Rivas that she was going to rip the signs down, that she said it wouldn't matter if she ripped them down because they weren't authentic, that she told Martinez the signs were bullshit, and that she told him she was going to rip the signs down. She said she did not have a problem parking that night and that she was inquiring for the next day. She said parking has been a problem at [REDACTED] even before the garages were closed. She denied that she

thought she was going to have a greater problem parking the next few days when she was contemplating the signs, saying that she comes home early and usually can find a parking space and that the problem with parking comes later at night. She said it was fair to say that she did not agree with the signs, that she did not like them.

The Respondent said when she was talking to Martinez, she was just talking to him and had no reason to be upset, for her car was already parked, and she was inquiring for the next day. She said she felt it necessary to talk to two different officers about the signs because she didn't think the signs were authentic. She agreed that Martinez did tell her if she had a complaint to call 311 or the office and "after that, he became upset and threw a tantrum" because she questioned his authority. She agreed that he threw a tantrum and that after that, she continued to speak to him. She said he threw the tantrum, got out of his car and they talked and "the whole thing with the sign was finished." She said she does not know why, but she brought up the signs again, questioning Martinez as to where he got the signs and if they were made up in the security office. "That's when it got ugly."

The Respondent agreed that Martinez threw a tantrum and she continued to speak to him, that he started calling her names and she continued to speak to him, that he exited the car and approached her after having a tantrum and she continued to talk to him, that she didn't do anything wrong, that he was throwing a tantrum and she did not remove herself from the situation, and that she stayed there when he approached. She said she left because he threatened to arrest her "a few times" and she didn't feel that she had done anything to get arrested. She said he was inside his car when he said he was going

to arrest her, and she left, went across the street and then stopped herself asking "Why am I running?"

The Respondent agreed that she was talking to Martinez and then she was running, that he had not done anything different than the last few minutes, i.e. yelling, cursing and screaming, that as a police officer, she would not think it would be appropriate to run off if she told him "I am going to arrest you," and that she touched and put her hand on the signs. She said that before Martinez put the cuffs on her, she was telling him she was a police officer, asking why she was being arrested and saying she didn't tear down any signs. She agreed that when he was attempting to cuff her, she flailed her arms, that she did not tear down any signs, that she is certain of this, that she recalled testifying at her interview that she didn't recall tearing down signs, that she was asked that question several times and each time she said she did not recall tearing down the signs, and that she never tore down any signs in her initial interview.

FINDINGS AND ANALYSIS

The Respondent is charged with tearing down "No Parking" signs being posted in the vicinity of the [REDACTED] power plant, resisting arrest, and failing to identify herself as a police officer. There are only two witnesses to these events, the Respondent and Martinez, who, not surprisingly, have different versions of these specific aspects of the confrontation that occurred that night. The only other evidence in the case was the testimony of Rivas and the video recording (DX 3), out of which several still photographs were made. Rivas arrived and was confronted by the Respondent before the events that are the subject of the charges occurred; he later returned to the scene after the disputed

portions of the event had ended. The videotape does not capture the tearing down of signs nor is there any audio to indicate if and when the Respondent identified herself as a police officer. Thus to make a finding in this case the Court must accept either the testimony of Martinez or that of the Respondent.

There is no question that on the night of January 24, 2007 the Respondent was in the vicinity of the power plant at [REDACTED] and was complaining about the parking restriction and "No Parking" signs being posted by Rivas and Martinez. She does not deny this and it was confirmed by Rivas. While Rivas did not see the Respondent tear down signs or fail to identify herself he did report on her conduct noting that after she was arrested and cuffed she was still pulling away. While Rivas is clearly a colleague of Martinez, he struck this Court as a candid witness. Certainly if he were prepared to embellish he could easily have added facts.

Additionally, there is the videotape recording and photographs made from that tape. While the videotape does not show the actual tearing down of signs, Martinez explained that it was out of the view of the camera. The tape itself, taken at night, is very grainy and appears to be some sort of skip frame as the motion is jerky. Moreover, the camera is some distance away so details are hard to see.

Nevertheless, the Respondent can be seen darting into traffic and across the street where she is apprehended by Martinez. This conduct tends to confirm Martinez' claim that she was acting irrationally. On the other hand, the Respondent's claim that she was running out of fear made no sense at all. She could easily have identified herself as a police officer early on in the discussion.

Consequently, I accept Martinez' version of events, to wit, that the Respondent tore down "No Parking" signs, that she resisted arrest by running from the scene and that she failed to identify herself as a police officer. The Respondent is therefore found guilty of each of the specifications.

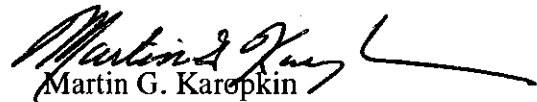
PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined, see *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974).

The Respondent was appointed to the Department on July 11, 1988. Information from her personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

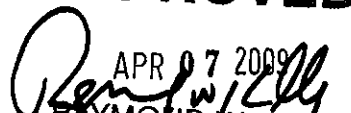
The Respondent initiated the contact with Martinez and allowed her irritation with the loss of parking spaces to get the better of her as she escalated the encounter into a confrontation with a law enforcement officer, Martinez. She then resisted arrest and failed to identify herself as a member of the service. A penalty of the loss of thirty (30) vacation days would be appropriate, see Disciplinary Case No. 73327/98.

Respectfully submitted,


Martin G. Karepkin

Deputy Commissioner-Trials

APPROVED


APR 7 2009
RAYMOND W. KELLY
POLICE COMMISSIONER